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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

9 JOHN E. BARNHOUSE,

10 Plaintiff,

11 v.

12 ELDON VAIL, et al.,

13 Defendants.

No. C09-5154 RJB/KLS

ORDER DENYING SEVENTH MOTION
FOR THE APPOINTMENT OF COUNSEL

14 Before the court is Plaintiff's seventh motion for the appointment of counsel. Dkt. 99.
15 Plaintiff's six previous motions for counsel (Dkts. 14, 40, 43, 44, 56, and 60) were denied.
16 (Dkts. 34 and 64).

17 *DISCUSSION*

18
19 No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v.*
20 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S.*
21 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) ("[a]ppointment of counsel under this section is
22 discretionary, not mandatory.") However, in "exceptional circumstances," a district court may
23 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28
24 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*
25 *grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional
26 circumstances exist, the court must evaluate both "the likelihood of success on the merits [and]

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1 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal
2 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting
3 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he
4 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to
5 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d
6 1101, 1103 (9th Cir. 2004).

7
8 That a *pro se* litigant may be better served with the assistance of counsel is not the test.
9 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues
10 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further
11 facts during litigation. But, if all that was required to establish the complexity of the relevant
12 issues was a demonstration of the need for development of further facts, then practically all cases
13 would involve complex legal issues. *Id.*

14
15 In his latest motion, Plaintiff states that he should be appointed counsel because he is
16 unable to afford counsel, his imprisonment will greatly limit his ability to litigate, the issues are
17 complex, he has limited access to the law library and counsel would be better equipped to
18 present evidence and cross-examine witnesses and that he has made repeated, but unsuccessful
19 attempts to find counsel. Dkt. 99, p. 2.

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21 Plaintiff’s indigency, inability to obtain counsel and lack of legal skills are not
22 exceptional circumstances which warrant the appointment of counsel. Plaintiff has demonstrated
23 an adequate ability to articulate his claims *pro se*. Plaintiff has not demonstrated that the issues
24 involved in this case are complex or that he has had any difficulties in expressing them. Plaintiff
25 has also not shown a likelihood of success on the merits beyond his conclusory allegations that
26 his case has merit.

1 In addition, motions for reconsideration are disfavored and will ordinarily be denied in
2 the "absence of a showing of manifest error in the prior ruling or a showing of new facts or legal
3 authority which could not have been brought to the court's attention earlier with reasonable
4 diligence." Local Rule CR 7(h)(1). Mr. Barnhouse has identified no error in the Court's
5 previous orders denying him counsel, nor has he presented any new facts or legal authority that
6 suggest reconsideration is appropriate.¹
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8 The Court is also troubled by Plaintiff's repeated motions that fail to address the legal
9 standard for appointment of counsel. Under Rule 11 of the Federal Rules of Civil Procedure,
10 Plaintiff's signature on a pleading is an indication that a motion is brought in good faith and is
11 not designed to needlessly increase the cost of litigation. The Court accepts that this latest
12 motion was brought in good faith. However, Plaintiff is warned that future motions should
13 address the proper legal standard for the Court's consideration. Failure to do so may result in
14 sanctions, which may include costs, monetary sanctions, and possibly dismissal of this action.
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16 Accordingly, Plaintiff's seventh motion to appoint counsel (Dkt. 99) is **DENIED**. The
17 Clerk is directed to send copies of this Order to Plaintiff.
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19 DATED this 8th day of March, 2010.

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22 Karen L. Strombom
23 United States Magistrate Judge
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26 ¹ Pursuant to CR 7(h)(2), a motion for reconsideration shall be filed within ten judicial days following the order to
which it relates. The last order denying Mr. Barnhouse's request for the appointment of counsel was entered on
November 4, 2009. Dkt. 64. Therefore, his motion for reconsideration is not timely and may be denied on that basis
alone.